ATTORNEY FOR APPELLANT:

MICHAEL E. CAUDILL
Caudill & Associates
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MAUREEN ANN BARTOLO
Special Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SHAWN ALEXANDER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0612-CR-1159
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
The Honorable Richard Sallee, Senior Judge
Cause No. 49G03-0604-FB-65557

October 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Shawn Alexander appeals his convictions for attempted robbery, as a class B felony, and criminal confinement, as a class B felony.

We affirm.

ISSUE

Whether the State presented sufficient evidence to support the convictions.

FACTS

On April 2, 2006, Kenneth Rogers was stopped at a red light when Alexander, with whom Rogers was acquainted, walked up to Rogers' car and kicked it. Alexander then followed Rogers into a gas station, where the two men argued.

Cameron Carlisle, a friend of Rogers, and Joshua Crum also were at the gas station and witnessed the argument between Rogers and Alexander. At one point during the argument, Alexander asked Carlisle what he was "lookin' at" and told Carlisle that he would have him "robbed next[.]" (Tr. 162). Alexander then left the gas station.

After leaving the gas station, Alexander drove home, where he telephoned William Taboada. After speaking with Alexander, Taboada went to Alexander's house, where Taboada "retrieved his gun . . . ."[1] (Tr. 197). Taboada and Alexander then drove to Rogers' apartment complex in Taboada's car.

Rogers drove home after the incident at the gas station. Carlisle later drove to Rogers' apartment with Crum and Todd Gipson, where they watched television with

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[1] Alexander testified during trial that although the gun was registered to Taboada, Taboada kept it at Alexander's house.

Rogers. At some point, Carlisle, Crum and Gipson left Rogers' apartment. Carlisle agreed to let Gipson drive his car; therefore, Carlisle sat in the front passenger's seat, Gipson sat in the driver's seat, and Crum sat in the back seat, behind Gipson.

Before Gipson could back Carlisle's car out of the parking space, Alexander and Taboada drove into the apartment complex's parking lot and parked behind Carlisle's car. Alexander immediately exited Taboada's car and "ran to the driver's side" of Carlisle's car. (Tr. 163). Alexander then reached into the back seat and punched Crum.

Taboada also exited his car and went to the passenger's side of Carlisle's car. Taboada pressed a gun to Carlisle's right leg, told him to empty his pockets and then "reached in [Carlisle's] right pocket[.]" (Tr. 164-65). Finding Carlisle's pocket to be empty, Taboada hit Carlisle on the head with the gun, causing Carlisle to strike his head on the dashboard and "black out." (Tr. 170). As Taboada hit Carlisle with the gun, the gun's magazine fell out of the grip. Carlisle felt someone grab his shoulders, pull him out of the vehicle and throw him on the ground.

After realizing that there was an altercation in the parking lot, Rogers left his apartment. As Rogers approached the scene, Taboada put the clip back in the gun and pointed the gun at Rogers. Rogers retreated when he realized his daughter was next to him. Taboada and Alexander left after Rogers' girlfriend hit Alexander with a board.

A couple of days later, Carlisle was at a gas station when Alexander drove by him and said, "I got you[.]" (Tr. 174). Carlisle believed Alexander meant that "he was gonna [sic] come and get [him]" or "hurt" him. (Tr. 174).

On or about April 5, 2006, Grant Schwomeyer, a detective with the Marion County Sheriff's Department, took statements from Rogers, Carlisle, Crum and Gipson regarding the events of April 2, 2006. Rogers and Carlisle identified both Alexander and Taboada from a photographic array as the men who assaulted Carlisle and Crum.

On or about April 11, 2006, officers with the Marion County SWAT team executed a search warrant for the residences of Alexander and Taboada. The search of Alexander's residence uncovered "several large stacks of money; a semi automatic handgun and an extra magazine for that handgun." (Tr. 119).

When officers searched Taboada's residence, they observed a white Buick parked in front of the residence. The Buick matched the description of the car used by Taboada and Alexander to block Carlisle's car. The Buick was registered to Taboada.

On April 11, 2006, the State charged Alexander with Count 1, attempted robbery, as a class B felony; Count 2, criminal confinement, as a class B felony; Count 3, intimidation, as a class A misdemeanor; and Count 4, battery, as a class B misdemeanor. The trial court held a joint jury trial on November 20, 2006. [2]

During the trial, Alexander testified that he had argued with Rogers because Rogers owed him money. Alexander further testified that when Taboada arrived at Alexander's home, Alexander told Taboada that he was "getting' ready to go back around to [Rogers']s apartment." (Tr. 197). According to Alexander's testimony, Taboada

[2] The State also charged Taboada with attempted robbery and criminal confinement. A jury found Taboada guilty of both charges on November 20, 2006. On appeal, this court affirmed Taboada's convictions.

"came and retrieved his gun before [they] left" Alexander's house. (Tr. 197). Alexander, however, denied asking Taboada to bring the gun or that they discussed robbing anyone.

Carlisle testified that after Taboada struck him with the gun, Carlisle felt someone grab his shoulders, pull him out of the vehicle and throw him on the ground; Rogers testified that he witnessed Taboada hit Carlisle's head with a gun and pull Carlisle out of his car.

The jury found Alexander guilty as charged. Following a sentencing hearing on November 29, 2007, the trial court sentenced Alexander to ten years, with two years suspended, on Count 1; ten years, with two years suspended, on Count 2; a suspended sentence of one year on Count 3; and a suspended sentence of 180 days on Count 4. The trial court ordered that the sentences be served concurrently. Thus, Alexander received an executed sentence of eight years.

DECISION

Alexander asserts that the evidence is insufficient to support his convictions for attempted robbery and criminal confinement. Specifically, Alexander maintains that the State failed to show that he knowingly or intentionally aided, induced, or caused Taboada to attempt to rob or criminally confine Carlisle.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It

> is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

1. Attempted Robbery

Alexander argues that the State failed to present sufficient evidence to support his conviction for attempted robbery. Indiana Code section 35-42-5-1 provides as follows:

> A person who knowingly or intentionally takes property from another person or from the presence of another person:
>
> (1) by using or threatening the use of force on any person; or
> (2) by putting any person in fear;
> commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant . . . .

Furthermore, "[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime." Ind. Code § 35-41-5-1.

Regarding accomplice liability, Indiana Code section 35-41-2-4 provides that "[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ." It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability." *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002).

> In determining whether there was sufficient evidence for purposes of accomplice liability, we consider such factors as: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime.

Id. Although they may be considered as evidence of accomplice liability, mere presence at the scene and failure to oppose the commission of the crime are insufficient to support a conviction under such a theory. *Turner v. State*, 755 N.E.2d 194, 198 (Ind. Ct. App.2001), *trans. denied*. Instead, evidence must exist of "the defendant's affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may be reasonably drawn." *Id.*

Here, the evidence shows that Alexander threatened to rob Carlisle when he saw Carlisle at the gas station. After his argument with Rogers, Alexander went home, where he telephoned Taboada and told him about his encounter with Rogers. Immediately after speaking with Alexander, Taboada drove to Alexander's house. Alexander informed Taboada that he was going to go to Rogers' apartment. Then, with Alexander's knowledge, Taboada retrieved his gun, and the two men left for Rogers' apartment.

Immediately upon arriving at Rogers' apartment complex, Alexander and Taboada exited Taboada's vehicle; Alexander then punched Crum, while Taboada threatened Carlisle with the gun and demanded that he empty his pockets. Subsequently, officers discovered Taboada's gun at Alexander's residence. Given this evidence, we find that the jury could have reasonably inferred that Alexander was an accomplice in the attempt to rob Carlisle.

2. Criminal Confinement

Next, Alexander contends that the State failed to present sufficient evidence to support his conviction for criminal confinement. Specifically, Alexander argues that "there was no common design or scheme to confine Carlisle"; "the record is wholly and

entirely silent as to what affirmative word or action on behalf of [Alexander] might have constituted aid, encouragement, inducement or assistance to Taboada to remove Carlisle from the car" and finding that pulling Carlisle from the car was not a natural consequence" of Alexander and Taboada going to Rogers' apartment or "of Taboada attempting to rob" Carlisle." Alexander's Br. 16, 17.

Pursuant to Indiana Code section 35-42-3-3(a), a person who knowingly or intentionally "removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another," commits criminal confinement. The offense is a class B felony if it is committed while armed with a deadly weapon. I.C. § 35-42-3-3(b).

Again, under the accomplice-liability statute, the State had to present sufficient evidence that Alexander knowingly or intentionally aided, induced, or caused Taboada to commit the crime of criminal confinement. *See* I.C. § 35-41-2-4. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2.

> Absent an admission by a defendant, intent "must be determined from a consideration of the defendant's conduct and the natural and usual consequences thereof." The trier of fact usually must resort to "reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person's conduct and the natural consequences that might be expected from that conduct, a showing or inference [of] the intent to commit that conduct exists."
>
> Under an accomplice liability theory, "the evidence need not show that the accomplice personally participated in the commission of each element of a particular offense." Accomplice liability "applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action." Thus, the accomplice is liable "for everything . . . which follows incidentally in the execution of the common design, as one of its

> natural and probable consequences, even though it was not intended as a part of the original design or common plan . . . ."

Kendall v. State, 790 N.E.2d 122, 131-32 (Ind. Ct. App. 2003) (internal citations omitted).

In this case, Alexander testified that after arguing with Rogers, he telephoned Taboada and asked Taboada to come to his house. Alexander further testified as follows: "I told [Taboada] to come on over because at the gas station, I felt—even if I would have fought [Rogers], I would have probably got beat up—due to the fact that they had more people than I had." (Tr. 196). After discussing the incident in the gas station's parking lot, Alexander and Taboada left for Rogers' apartment, with Taboada taking a gun. Furthermore, Taboada testified that he and Alexander went to Rogers' apartment to "beat them up," meaning "[w]hoever tried to jump [his] buddy . . . ." (Tr. 243, 243). Taboada further testified that he "didn't care who" he assaulted. (Tr. 243). Furthermore, testimony reflects that Taboada dragged Carlisle out of the car in the process of assaulting Carlisle.

Given the above facts, the jury could reasonably infer that Alexander and Taboada jointly agreed to assault Rogers, as well as anyone who was with Rogers. Furthermore, the jury could reasonably infer that Alexander knew that Taboada forcing someone from one place to another during their joint assault would be a natural and probable consequence of their criminal behavior. Thus, we find the evidence sufficient to support Alexander's conviction for criminal confinement.

Affirmed.

MAY, J., and CRONE, J., concur.